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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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11 RAFAEL A. DOMINGUEZ,

12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN,
15 COMMISSIONER OF SOCIAL
16 SECURITY ADMINISTRATION,

17 Defendant.
18

Case No. ED CV 15-1587 JCG

**MEMORANDUM OPINION AND
ORDER**

19 Rafael A. Dominguez (“Plaintiff”) challenges the Social Security
20 Commissioner’s decision denying his application for disability benefits. Two issues
21 are presented for decision here:

22 1. Whether the Administrative Law Judge (“ALJ”) improperly assigned
23 weight to an examining physician’s opinion (*see* Joint Stip. at 3-9); and

24 2. Whether the ALJ properly rejected Plaintiff’s credibility (*see id.* at 15-18).

25 The Court addresses Plaintiff’s contentions below, and finds that reversal is not
26 warranted.

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1 A. The ALJ Properly Assigned Weight to the Examining Physician's
 2 Opinion

3 Plaintiff contends that the ALJ improperly assigned “great weight” to the
 4 opinion of orthopedic consultative examining physician Dr. Robert J. MacArthur. (*See*
 5 Joint Stip. at 3-9; Administrative Record (“AR”) at 23-24.) Dr. MacArthur opined that
 6 Plaintiff could perform medium work. (AR at 397-403.)

7 Preliminarily, as a matter of law, the Court must affirm the Commissioner’s
 8 decision if it is based on proper legal standards and the findings of fact are supported
 9 by substantial evidence in the “record as a whole.” *Magallanes v. Bowen*, 881 F.2d
 10 747, 750 (9th Cir. 1989). Further, “[w]hen the evidence before the ALJ is subject to
 11 more than one rational interpretation, [the Court] must defer to the ALJ’s conclusion.”
 12 *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1198 (9th Cir. 2004).

13 As a rule, the ALJ generally must “indicate the amount of weight given to . . .
 14 items of evidence[.]” *Albalos v. Sullivan*, 907 F.2d 871, 874 (9th Cir. 1990) (quoting
 15 *Lewin v. Schwieker*, 654 F.2d 631, 635 (9th Cir. 1981)). In evaluating medical opinion
 16 evidence, an ALJ need not give each opinion equal weight; instead, the value of each is
 17 determined by considering a number of factors, including the source. *See Tapia v.*
 18 *Colvin*, 520 F. App’x 600, 601 (2013); 20 C.F.R. §§ 404.1527(c), 416.927(c).

19 Here, the ALJ provided at least four valid reasons for assigning “great weight”
 20 to Dr. MacArthur’s opinion. (AR at 24.)

21 First, Dr. MacArthur personally observed and examined Plaintiff. (AR at 24,
 22 397-403); *see Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001) (in general,
 23 more weight is given to opinions of medical sources who have actually examined
 24 and/or treated the claimant); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir.
 25 2001) (“[Examining physician’s] opinion alone constitutes substantial evidence,
 26 because it rests on his own independent examination of [claimant].”).

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1 Second, Dr. MacArthur's opinion was consistent with his own objective findings
2 from the examination. (AR at 24); *see Shavin v. Comm'r of Soc. Sec. Admin.*, 488 F.
3 App'x 223, 224 (9th Cir. 2012) (treating physician's opinions should have been given
4 greater weight in part because they were internally consistent); 20 C.F.R.
5 §§ 404.1527(c)(3), 416.927(c)(3) ("The more a medical source presents relevant
6 evidence to support an opinion, particularly medical signs and laboratory findings, the
7 more weight we will give that opinion."). Specifically, the opinion was consistent with
8 (1) negative paraspinal spasms findings; (2) an unremarkable lumbar spine x-ray;
9 (3) no gross focal neurological deficits findings; and (4) Plaintiff's questionable effort
10 in the physical examination. (*Id.* at 397, 399-401.)

11 Third, Dr. MacArthur's opinion was consistent with the State agency medical
12 consultants' determinations that Plaintiff was not disabled. (AR at 24, 46-63, 66-85);
13 *see also Shavin*, 488 F. App'x at 224 (treating physician's opinions should have been
14 given greater weight in part because they were consistent with another physician's
15 analysis); *Batson*, 359 F.3d at 1197 (permissible for ALJ to assign given weight "in
16 light of the objective medical evidence and the opinions and observations of other
17 doctors").

18 Fourth, Dr. MacArthur's opinion was consistent with the record "as a whole."
19 (AR at 24); *see Magallanes*, 881 F.2d at 750; *Batson*, 359 F.3d at 1197. Specifically,
20 the opinion was consistent with (1) treatment notes, (2) Plaintiff's medication usage;
21 (3) laboratory findings; and (4) Plaintiff's ongoing clinical presentation. (*See id.* at 24,
22 242, 247, 252-54, 260, 263-68, 272, 280, 320-22, 330, 361, 366, 382-84, 406, 408,
23 410, 415, 421, 428, 436, 452, 456, 464, 479, 482, 484.)

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1 B. The ALJ Properly Assessed Plaintiff's Credibility

2 Plaintiff contends that the ALJ improperly assessed his credibility. (*See Joint*
3 *Stip.* at 15-18.)

4 As a rule, an ALJ may reject a claimant's credibility "only upon (1) finding
5 evidence of malingering, or (2) expressing clear and convincing reasons for doing so."
6 *Benton v. Barnhart*, 331 F.3d 1030, 1040 (9th Cir. 2003). "General findings are
7 insufficient; rather, the ALJ must identify what testimony is not credible and what
8 evidence undermines the claimant's complaints." *Brown-Hunter v. Colvin*, 806 F.3d
9 487, 493 (9th Cir. 2015) (citation and internal quotation marks omitted).

10 1. Evidence of Malingering

11 As an initial matter, the ALJ was entitled to reject Plaintiff's testimony without
12 providing clear and convincing reasons because there was affirmative evidence of
13 malingering. *See Benton*, 331 F.3d at 1040; *Watkins v. Comm'r Soc. Sec. Admin.*, 611
14 F. App'x 903, 904 (9th Cir. 2015) (ALJ did not err in rejecting subjective testimony
15 when record contained affirmative evidence suggesting claimant was malingering). As
16 mentioned, Dr. MacArthur doubted Plaintiff's credibility due to his poor effort during
17 the examination. (AR at 397, 400.) Additionally, (1) Dr. MacArthur noted that
18 Plaintiff used a cane at the examination that was not medically necessary; (2) Dr.
19 MacArthur stated that Plaintiff did not appear to actually be in acute or chronic
20 distress; and (3) other reviewing doctors noted Plaintiff's "poor effort and
21 embellishment of symptoms." (*Id.* at 50-52, 59-60, 71, 81, 83, 213 (Plaintiff's
22 exertional questionnaire admitting he does not use a cane), 265, 399.)

23 2. Clear and Convincing Reasons for Rejecting Plaintiff's Credibility

24 Additionally, despite having no need to do so, *see Lester v. Chater*, 81 F.3d 821,
25 834 (9th Cir. 1995), the ALJ provided at least four clear and convincing reasons for
26 discounting Plaintiff's testimony.

1 First, Plaintiff received routine and conservative treatment consisting of
 2 medication and physical therapy.¹ (AR at 18-23, 35-36, 272-73, 331, 351, 363, 406,
 3 456, 480, 482, 484); *see Parra v. Astrue*, 481 F.3d 742, 751 (9th Cir. 2007)
 4 (“[E]vidence of ‘conservative treatment’ is sufficient to discount a claimant’s
 5 testimony regarding severity of an impairment.”) (citation omitted); *Edginton v.*
 6 *Colvin*, 625 F. App’x 334, 336 (9th Cir. 2015) (ALJ properly relied on claimant’s
 7 “routine and conservative” back treatment, which generally consisted of medication
 8 and transcutaneous electrical nerve stimulation).

9 Second, Plaintiff responded favorably to treatment. (AR at 18-23, 34-37, 263,
 10 270, 272, 275-78, 281, 361, 364, 406, 427, 440, 446, 453-54, 456, 466, 469, 476, 478,
 11 482, 484); *see Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (ALJ
 12 properly rejected claimant’s subjective complaints where medical records showed that
 13 she responded favorably to conservative treatment of physical therapy and
 14 medication); *Warre v. Comm’r Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006)
 15 (“Impairments that can be controlled effectively with medication are not disabling[.]”).

16 Third, there were significant gaps in Plaintiff’s treatment.² (AR at 22-23; *see*
 17 *also* AR at 18-21.); *see Marsh v. Colvin*, 792 F.3d 1170, 1173 n.2 (9th Cir. 2015) (ALJ
 18 properly considered treatment gap in assessing claimant’s credibility); *Burch v.*
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21 ¹ Plaintiff fails to discuss, or even acknowledge, the ALJ’s credibility findings related to his
 22 treatment. *See Greger v. Barnhart*, 464 F.3d 968, 973 (9th Cir. 2006) (claimant waived issues not
 23 raised before the district court); *Owens v. Colvin*, 2014 WL 5602884, at *4 (C.D. Cal. Nov. 4, 2014)
 (claimant’s failure to discuss, or even acknowledge, ALJ’s reliance on certain reasons waived any
 challenge to those aspects of ALJ’s credibility finding).

24 ² Notably, Plaintiff makes no attempt to dispute the factual assertions regarding the gaps in
 25 treatment – including the more than five-month delay in treatment for his back – outlined by the
 26 Commissioner and the ALJ. (Joint Stip. at 19; AR at 22-23, 189, 192-94, 217-18, 227, 251, 330,
 27 413); *see Greger*, 464 F.3d at 973; *Schoonmaker v. Colvin*, 2015 WL 6658669, at *5 (D. Or. Oct. 30,
 28 2015) (agreeing with Commissioner that ALJ made permissible inferences regarding intensity and
 persistence of symptoms based on amount and type of treatment, and that Plaintiff failed to dispute
 the factual assertions regarding gaps in treatment).

1 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (ALJ properly relied on three- to four-
2 month treatment gap in partially discrediting claimant's testimony).

3 Fourth, and finally, Plaintiff's allegations of severe symptoms contradicted the
4 objective and diagnostic findings of record. (AR at 22-23); *see Rollins v. Massanari*,
5 261 F.3d 853, 856-57 (9th Cir. 2001) (inconsistencies with objective evidence, when
6 combined with other factors, are valid reasons for rejecting a claimant's testimony).
7 For example, Plaintiff had a number of normal findings, including (1) those made by
8 Dr. MacArthur; (2) multiple physical examinations within the normal range; and (3) an
9 x-ray showing discogenic changes along with evidence of osteoarthritis, but no
10 evidence of fracture or malalignment. (*Id.* at 242, 247, 252-54, 260, 263-68, 272, 280,
11 320-22, 330, 361, 366, 382-84, 406, 408, 410, 415, 421, 428, 436, 452, 456, 464, 479,
12 482, 484.)

13 Thus, the ALJ properly discounted Plaintiff's credibility.³

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23 ³ Plaintiff primarily discusses two factors in attacking the credibility determination: the ALJ's
24 reliance on (1) daily activities, and (2) Plaintiff quitting work before his onset date for reasons
25 unrelated to disability. (*See* Joint Stip. at 15-16; AR 22-23.) In light of the four valid reasons for
26 rejecting the testimony discussed above, any error in the ALJ's reliance on those additional factors is
27 harmless. *See Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (when
28 ALJ provides specific reasons for discounting claimant's credibility, decision may be upheld even if
certain reasons were invalid as long as "remaining reasoning and ultimate credibility determination"
were supported by substantial evidence (emphasis omitted)); *Strutz v. Colvin*, 2015 WL 4727459, at
*7 (D. Or. Aug. 10, 2015) (upholding credibility finding because ALJ provided at least one valid
reason to discount claimant's testimony).

1 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered
2 **AFFIRMING** the decision of the Commissioner denying benefits.
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4 DATED: *8.23.2016*

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6 
7 Hon. Jay C. Gandhi
8 United States Magistrate Judge

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10 **This Memorandum Opinion and Order is not intended for publication. Nor is it**
11 **intended to be included or submitted to any online service such as**
12 **Westlaw or Lexis.**

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